IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7355 OF 2005

M/s.OHM Computers & Ors. ...Applicants

Versus

M/s.Priya Ltd. & Anr. ...Respondents

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Mr.Suresh M.Jain for Applicants.

Mr.Vinod N.Solanki for Respondent No.1.

Ms.Y.S.Shinde, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 28, 2005.

P.C.

1. Heard Counsel for the parties. First contention raised before me is that the complaint has been filed on the basis of second demand notice dated 13th January 2005 and not the demand notice dated January 11, 2005. This submission only deserves to be stated to be rejected.

2. On perusing the document on page 17(A) which, in my opinion, is simplicitor intimation

sent by complainant to the Applicants/accused on 11th January 2005 on e-mail that the cheque No.948126 has been returned by their bankers. It is further observed as follows:

> "Please reply to us regarding the immediate payment of this cheque and also remit Rs.200/- PER cheque as cheque return charges."

3. By no stretch of imagination, this document can take the colour of demand notice required under Section 138 of the Negotiable Instruments Act.

4. It is, thereafter, the Complainant has represented the cheque and when the cheque was returned once again, the demand notice came to be sent on 13th January 2005. Accordingly, first submission of the Applicants will have to be rejected.

5. It is then contended on behalf of the Applicants that the Applicants issued stop-payment

instructions because of dispute between the parties relating to the supply made. In my opinion, the question whether the cheque issued by the Petitioners was towards legal debts and could be enforced, is a matter for trial. That contention, therefore, cannot be the basis to quash the proceedings. Hence, dismissed. All contentions on merits are left open.

A.M.KHANWILKAR, J.